

Office Memorandum • UNITED STATES GOVERNMENT

TO : MEMORANDUM FOR THE RECORD

DATE: 18 September 1953

FROM : Office of General Counsel

SUBJECT: Conversation with Miss Meekison - State Department

OGC HAS REVIEWED.

1. On September 1, 1953 an article appeared in the Washington Daily News describing a case in which the Attorney General has been asked by the State Department and the Civil Service Commission to rule upon the question whether the Veteran's Preference Act applies to the Foreign Service.

2. On September 16, 1953, I called Mr. Pfleger's office to inquire whether we might be allowed to talk to the person responsible for handling the case for the State Department, and was referred to Mr. Lyerly, the attorney in charge of Foreign Service matters. Mr. Lyerly in turn referred me to Miss Meekison (x 297), who has been working on the case since its inception.

3. On September 17, 1953, I conferred with Miss Meekison to find out: (1) if she would make available to us the correspondence and briefs submitted by both parties and (2) whether she has any extra copies which she would be willing to give us. Miss Meekison very willingly allowed me to study the correspondence and briefs, but was unwilling to allow all or any part thereof to be copied.

4. The case has two aspects. At the time the State Department took over the management of occupied Germany from the military two civilians who were acting as judges in military courts were dropped by the military and not rehired by the State Department. They sought relief by appeal to the Civil Service Commission on the theory that the transfer of function was one of those contemplated by Section 12 of the Veteran's Preference Act. Late in 1952, the Civil Service Commission ordered the State Department to rehire both men and pay them for the period since they were released. The State Department has refused both orders. The request to the Attorney General is also of concern to the State Department because of the reductions in force in the Foreign Service which was carried out beginning in April of this year. The Civil Service Commission and the State Department were unable to agree whether the provisions of the Veteran's Preference Act should govern this reduction in force, and the appeal to the Attorney General for an opinion was made in May.

5. Briefly the theory relied upon by the State Department is that the Foreign Service Act of 1946 gave the Secretary of State complete authority to administer the Foreign Service and since the Foreign Service Act came after the Veteran's Preference Act in point of time the intent of Congress could not have been to allow the Civil Service Commission to interfere with the Secretary's authority. A subsidiary theory is that the Veteran's Preference Act merely codified existing law, which was to the effect that the veteran's preferences applied only to the classified Civil Service, and therefore, if the Veteran's Preference Act were intended to apply to the Foreign Service such would have been specifically stated. Another theory is that the Veteran's Preference Act is mandatory and inflexible, and thus not in keeping with the flexibility necessary for administration of the Foreign Service.

6. The theory relied upon the Civil Service Commission is: (1) the Veteran's Preference Act refers to any reduction in any civilian service in any Federal Agency, (2) the Foreign Service is a civilian service of a Federal Agency, (3) no legislation subsequent to the Veteran's Preference Act has specifically removed the Foreign Service from the coverage of Section 12 of the Act, and (4) no legislation subsequent to the Veteran's Preference Act has by implication excluded the Foreign Service from the coverage of Section 12 of the Act.

7. Miss Meekison does not know when the Attorney General is expected to render a decision. In June the State Department was asked to furnish additional information on the claim that Foreign Service duty abroad is different from that of any other Government Agency. Miss Meekison has promised me that she will let me know when a decision by the Attorney General has been rendered.

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OGC/TMF:cd (18 September 1953)

Distribution

Orig - Subject File
1 - Chrono
i - Signer

Nov 12 - Talked with
Miss Meekison - Atty Gen.
will not give opinion since
matter is ~~in~~ ~~under~~ litigation -
See Houston memorandum
file future number away
Pending agency finding as policy
matter OIA has decided it will follow OGA Act -